

Introduced by Senator Leno

February 27, 2009

An act to amend Sections 54954.5, 54957.1, and 54957.6 of the Government Code, relating to public meetings.

LEGISLATIVE COUNSEL'S DIGEST

SB 711, as introduced, Leno. Public meetings: closed sessions: labor negotiations.

(1) The Ralph M. Brown Act requires the meetings of the legislative body of a local agency to be conducted openly and publicly, with specified exceptions. Under the act, the legislative body of a local agency may hold a closed session with the local agencies' designated representatives regarding negotiations concerning employee compensation but is required, in an open and public session prior to those closed sessions, to disclose specified information identifying the agency's designated representatives. Existing law prohibits a closed session from including any final action on the proposed compensation of unrepresented employees. The act also requires the legislative body of a local agency to publicly report any action taken in closed session, as prescribed, including the approval of an agreement concluding labor negotiations with represented employees after the agreement is final and has been accepted or ratified by the other party. The act provides a legislative body or elected official is not in violation of certain provisions of the act if the agenda that describes a closed session item is in substantial compliance by including specified information.

This bill would additionally require a local agency, before holding a closed session regarding employee compensation, to identify the employee or class of employees that are the subject of the negotiations, the representatives of the employees, and all known matters within the

scope of the negotiations, and to also make available to the public certain written proposals. The bill would require the legislative body, before commencing negotiations for a new collective bargaining agreement or initial proposal for an unrepresented employee, to present, in an open and public session, the new collective bargaining agreement or an initial proposal. The bill would additionally require any vote of the legislative body on the collective bargaining agreement or initial proposal to be taken at an open and public session.

The bill would revise the prohibition against a closed session including a final action on the proposed compensation of unrepresented employees to instead prohibit the closed session from including any final vote. The bill would require a final vote on any action taken pursuant to a closed session to be conducted during an open and public regular meeting of the legislative body, and only after disclosure of certain writings, cost projections, and methodology. The bill would also make a conforming change to delete the requirement that the legislative body publicly report the action taken in closed session after the agreement is final. The bill would also make conforming changes to the information required to be included in an agenda describing a closed session, for purposes of compliance with the act.

The bill would impose a state-mandated local program by imposing new duties upon local agencies.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 54954.5 of the Government Code is
2 amended to read:
3 54954.5. For purposes of describing closed session items
4 pursuant to Section 54954.2, the agenda may describe closed
5 sessions as provided below. No legislative body or elected official
6 shall be in violation of Section 54954.2 or 54956 if the closed

1 session items were described in substantial compliance with this
2 section. Substantial compliance is satisfied by including the
3 information provided below, irrespective of its format.

4 (a) With respect to a closed session held pursuant to Section
5 54956.7:

6 LICENSE/PERMIT DETERMINATION

7 Applicant(s): (Specify number of applicants)

8 (b) With respect to every item of business to be discussed in
9 closed session pursuant to Section 54956.8:

10 CONFERENCE WITH REAL PROPERTY NEGOTIATORS

11 Property: (Specify street address, or if no street address, the
12 parcel number or other unique reference, of the real property under
13 negotiation)

14 Agency negotiator: (Specify names of negotiators attending the
15 closed session) (If circumstances necessitate the absence of a
16 specified negotiator, an agent or designee may participate in place
17 of the absent negotiator so long as the name of the agent or
18 designee is announced at an open session held prior to the closed
19 session.)

20 Negotiating parties: (Specify name of party (not agent))

21 Under negotiation: (Specify whether instruction to negotiator
22 will concern price, terms of payment, or both)

23 (c) With respect to every item of business to be discussed in
24 closed session pursuant to Section 54956.9:

25 CONFERENCE WITH LEGAL COUNSEL—EXISTING
26 LITIGATION

27 (Subdivision (a) of Section 54956.9)

28 Name of case: (Specify by reference to claimant's name, names
29 of parties, case or claim numbers)

30 or

31 Case name unspecified: (Specify whether disclosure would
32 jeopardize service of process or existing settlement negotiations)

33 CONFERENCE WITH LEGAL COUNSEL—ANTICIPATED
34 LITIGATION

35 Significant exposure to litigation pursuant to subdivision (b) of
36 Section 54956.9: (Specify number of potential cases)

37 (In addition to the information noticed above, the agency may
38 be required to provide additional information on the agenda or in
39 an oral statement prior to the closed session pursuant to

- 1 subparagraphs (B) to (E), inclusive, of paragraph (3) of subdivision
2 (b) of Section 54956.9.)
- 3 Initiation of litigation pursuant to subdivision (c) of Section
4 54956.9: (Specify number of potential cases)
- 5 (d) With respect to every item of business to be discussed in
6 closed session pursuant to Section 54956.95:
- 7 LIABILITY CLAIMS
- 8 Claimant: (Specify name unless unspecified pursuant to Section
9 54961)
- 10 Agency claimed against: (Specify name)
- 11 (e) With respect to every item of business to be discussed in
12 closed session pursuant to Section 54957:
- 13 THREAT TO PUBLIC SERVICES OR FACILITIES
- 14 Consultation with: (Specify name of law enforcement agency
15 and title of officer, or name of applicable agency representative
16 and title)
- 17 PUBLIC EMPLOYEE APPOINTMENT
- 18 Title: (Specify description of position to be filled)
- 19 PUBLIC EMPLOYMENT
- 20 Title: (Specify description of position to be filled)
- 21 PUBLIC EMPLOYEE PERFORMANCE EVALUATION
- 22 Title: (Specify position title of employee being reviewed)
- 23 PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE
- 24 (No additional information is required in connection with a
25 closed session to consider discipline, dismissal, or release of a
26 public employee. Discipline includes potential reduction of
27 compensation.)
- 28 (f) With respect to every item of business to be discussed in
29 closed session pursuant to Section 54957.6:
- 30 CONFERENCE WITH LABOR NEGOTIATORS
- 31 Agency designated representatives: (Specify names of designated
32 representatives attending the closed session) (If circumstances
33 necessitate the absence of a specified designated representative,
34 an agent or designee may participate in place of the absent
35 representative so long as the name of the agent or designee is
36 announced at an open session held prior to the closed session.)
- 37 *The employee or class of employees that are the subject of the*
38 *negotiations*
- 39 *Representative of the employees*

1 Employee organization: (Specify name of organization
2 representing employee or employees in question)

3 or

4 Unrepresented employee: (Specify position title of unrepresented
5 employee who is the subject of the negotiations)

6 *All known matters within the scope of the negotiations*

7 *Any written proposals communicated by the local agency to*
8 *representatives of public employees and proposals received by the*
9 *local agency from representatives of the public employees*

10 (g) With respect to closed sessions called pursuant to Section
11 54957.8:

12 CASE REVIEW/PLANNING

13 (No additional information is required in connection with a
14 closed session to consider case review or planning.)

15 (h) With respect to every item of business to be discussed in
16 closed session pursuant to Sections 1461, 32106, and 32155 of the
17 Health and Safety Code or Sections 37606 and 37624.3 of the
18 Government Code:

19 REPORT INVOLVING TRADE SECRET

20 Discussion will concern: (Specify whether discussion will
21 concern proposed new service, program, or facility)

22 Estimated date of public disclosure: (Specify month and year)

23 HEARINGS

24 Subject matter: (Specify whether testimony/deliberation will
25 concern staff privileges, report of medical audit committee, or
26 report of quality assurance committee)

27 (i) With respect to every item of business to be discussed in
28 closed session pursuant to Section 54956.86:

29 CHARGE OR COMPLAINT INVOLVING INFORMATION
30 PROTECTED BY FEDERAL LAW

31 (No additional information is required in connection with a
32 closed session to discuss a charge or complaint pursuant to Section
33 54956.86.)

34 (j) With respect to every item of business to be discussed in
35 closed session pursuant to Section 54956.96:

36 CONFERENCE INVOLVING A JOINT POWERS AGENCY
37 (Specify by name)

38 Discussion will concern: (Specify closed session description
39 used by the joint powers agency)

1 Name of local agency representative on joint powers agency
2 board: (Specify name)

3 (Additional information listing the names of agencies or titles
4 of representatives attending the closed session as consultants or
5 other representatives.)

6 (k) With respect to every item of business to be discussed in
7 closed session pursuant to Section 54956.75:

8 **AUDIT BY BUREAU OF STATE AUDITS**

9 **SEC. 2.** Section 54957.1 of the Government Code is amended
10 to read:

11 54957.1. (a) The legislative body of any local agency shall
12 publicly report any action taken in closed session and the vote or
13 abstention on that action of every member present, as follows:

14 (1) Approval of an agreement concluding real estate negotiations
15 pursuant to Section 54956.8 shall be reported after the agreement
16 is final, as follows:

17 (A) If its own approval renders the agreement final, the body
18 shall report that approval and the substance of the agreement in
19 open session at the public meeting during which the closed session
20 is held.

21 (B) If final approval rests with the other party to the negotiations,
22 the local agency shall disclose the fact of that approval and the
23 substance of the agreement upon inquiry by any person, as soon
24 as the other party or its agent has informed the local agency of its
25 approval.

26 (2) Approval given to its legal counsel to defend, or seek or
27 refrain from seeking appellate review or relief, or to enter as an
28 amicus curiae in any form of litigation as the result of a
29 consultation under Section 54956.9 shall be reported in open
30 session at the public meeting during which the closed session is
31 held. The report shall identify, if known, the adverse party or
32 parties and the substance of the litigation. In the case of approval
33 given to initiate or intervene in an action, the announcement need
34 not identify the action, the defendants, or other particulars, but
35 shall specify that the direction to initiate or intervene in an action
36 has been given and that the action, the defendants, and the other
37 particulars shall, once formally commenced, be disclosed to any
38 person upon inquiry, unless to do so would jeopardize the agency's
39 ability to effectuate service of process on one or more unserved

1 parties, or that to do so would jeopardize its ability to conclude
2 existing settlement negotiations to its advantage.

3 (3) Approval given to its legal counsel of a settlement of pending
4 litigation, as defined in Section 54956.9, at any stage prior to or
5 during a judicial or quasi-judicial proceeding shall be reported
6 after the settlement is final, as follows:

7 (A) If the legislative body accepts a settlement offer signed by
8 the opposing party, the body shall report its acceptance and identify
9 the substance of the agreement in open session at the public
10 meeting during which the closed session is held.

11 (B) If final approval rests with some other party to the litigation
12 or with the court, then as soon as the settlement becomes final,
13 and upon inquiry by any person, the local agency shall disclose
14 the fact of that approval, and identify the substance of the
15 agreement.

16 (4) Disposition reached as to claims discussed in closed session
17 pursuant to Section 54956.95 shall be reported as soon as reached
18 in a manner that identifies the name of the claimant, the name of
19 the local agency claimed against, the substance of the claim, and
20 any monetary amount approved for payment and agreed upon by
21 the claimant.

22 (5) Action taken to appoint, employ, dismiss, accept the
23 resignation of, or otherwise affect the employment status of, a
24 public employee in closed session pursuant to Section 54957 shall
25 be reported at the public meeting during which the closed session
26 is held. Any report required by this paragraph shall identify the
27 title of the position. The general requirement of this paragraph
28 notwithstanding, the report of a dismissal or of the nonrenewal of
29 an employment contract shall be deferred until the first public
30 meeting following the exhaustion of administrative remedies, if
31 any.

32 ~~(6) Approval of an agreement concluding labor negotiations~~
33 ~~with represented employees pursuant to Section 54957.6 shall be~~
34 ~~reported after the agreement is final and has been accepted or~~
35 ~~ratified by the other party. The report shall identify the item~~
36 ~~approved and the other party or parties to the negotiation.~~

37 ~~(7)~~

38 (6) Pension fund investment transaction decisions made pursuant
39 to Section 54956.81 shall be disclosed at the first open meeting of
40 the legislative body held after the earlier of the close of the

1 investment transaction or the transfer of pension fund assets for
2 the investment transaction.

3 (b) Reports that are required to be made pursuant to this section
4 may be made orally or in writing. The legislative body shall provide
5 to any person who has submitted a written request to the legislative
6 body within 24 hours of the posting of the agenda, or to any person
7 who has made a standing request for all documentation as part of
8 a request for notice of meetings pursuant to Section 54954.1 or
9 54956, if the requester is present at the time the closed session
10 ends, copies of any contracts, settlement agreements, or other
11 documents that were finally approved or adopted in the closed
12 session. If the action taken results in one or more substantive
13 amendments to the related documents requiring retyping, the
14 documents need not be released until the retyping is completed
15 during normal business hours, provided that the presiding officer
16 of the legislative body or his or her designee orally summarizes
17 the substance of the amendments for the benefit of the document
18 requester or any other person present and requesting the
19 information.

20 (c) The documentation referred to in subdivision (b) shall be
21 available to any person on the next business day following the
22 meeting in which the action referred to is taken or, in the case of
23 substantial amendments, when any necessary retyping is complete.

24 (d) Nothing in this section shall be construed to require that the
25 legislative body approve actions not otherwise subject to legislative
26 body approval.

27 (e) No action for injury to a reputational, liberty, or other
28 personal interest may be commenced by or on behalf of any
29 employee or former employee with respect to whom a disclosure
30 is made by a legislative body in an effort to comply with this
31 section.

32 (f) This section is necessary to implement, and reasonably within
33 the scope of, paragraph (1) of subdivision (b) of Section 3 of
34 Article I of the California Constitution.

35 SEC. 3. Section 54957.6 of the Government Code is amended
36 to read:

37 54957.6. (a) (1) Notwithstanding any other ~~provision of law,~~
38 a legislative body of a local agency may hold ~~a closed session~~
39 *session pursuant to this section* with the local agency's designated
40 representatives regarding the salaries, salary schedules, or

1 compensation paid in the form of fringe benefits of its represented
2 and unrepresented employees, and, for represented employees,
3 any other matter within the statutorily provided scope of
4 representation.

5 ~~However, prior to the~~

6 (2) *Before holding a closed session pursuant to paragraph (1),*
7 *the legislative body of the local agency shall hold an open and*
8 *public session in which it identifies its designated representatives.*
9 *does all of the following:*

10 (A) *Identifies the agency's designated representatives, the*
11 *employee or class of employees that are the subject of the*
12 *negotiations, and the representatives of the employees.*

13 (B) *Identifies all known matters within the scope of the*
14 *negotiations.*

15 (C) *Makes available to the public any written proposals*
16 *communicated by the local agency to representatives of public*
17 *employees and proposals received by the local agency from*
18 *representatives of the public employees.*

19 (3) *The notice required by subparagraphs (A) and (B) of*
20 *paragraph (2) may be given orally or as part of the meeting*
21 *agenda.*

22 (b) *A legislative body of a local agency shall present a new*
23 *collective bargaining agreement or an initial proposal for an*
24 *unrepresented employee in an open and public session, before*
25 *commencing negotiations regarding that new collective bargaining*
26 *agreement or initial proposal. A vote of a legislative body on the*
27 *new collective bargaining agreement or initial proposal subject*
28 *to this subdivision shall be taken at an open and public session.*

29 (c) *A closed session of a legislative body of a local agency*
30 *authorized pursuant to this section is subject to all of the following*
31 *conditions:*

32 ~~Closed sessions of a legislative body of a local agency, as~~
33 ~~permitted in this section,~~

34 (1) *The closed session shall be only for the purpose of reviewing*
35 *its the position of the local agency and instructing the local*
36 *agency's designated representatives.*

37 ~~Closed sessions, as permitted in this section,~~

38 (2) *The closed session may only take place prior to and during*
39 *consultations and discussions with representatives of employee*
40 *organizations and unrepresented employees.*

1 ~~Closed sessions~~

2 (3) *The closed session* with the local agency's designated
3 representative regarding the salaries, salary schedules, or
4 compensation paid in the form of fringe benefits may include
5 discussion of an agency's available funds and funding priorities,
6 but only insofar as these discussions relate to providing instructions
7 to the local agency's designated representative.

8 ~~Closed sessions~~

9 (4) *The closed session* held pursuant to this section shall not
10 include ~~any final action on the proposed compensation of one or~~
11 ~~more unrepresented employees vote.~~

12 ~~For~~

13 (d) *A final vote on any action taken pursuant to this section*
14 *shall be conducted during an open and public regular meeting of*
15 *the legislative body, but only after disclosure, pursuant to*
16 *subdivision (a) of Section 54957.5 of all writings associated with*
17 *the proposed action, including any projections of the proposed*
18 *action's costs and any assumptions and methodology used to*
19 *calculate those costs.*

20 (e) *For the purposes enumerated in this section, a legislative*
21 *body of a local agency may also meet with a state conciliator who*
22 *has intervened in the proceedings.*

23 ~~(b)~~

24 (f) *For the purposes of this section, the term "employee" shall*
25 *include includes an officer or an independent contractor who*
26 *functions as an officer or an employee, but shall not include any*
27 *an elected official, member of a legislative body, or other*
28 *independent contractors contractor.*

29 SEC. 4. If the Commission on State Mandates determines that
30 this act contains costs mandated by the state, reimbursement to
31 local agencies and school districts for those costs shall be made
32 pursuant to Part 7 (commencing with Section 17500) of Division
33 4 of Title 2 of the Government Code.